

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 BANK OF AMERICA, NA successor by
12 merger to BAC HOMES LOANS
13 SERVICING, LP fka COUNTRYWIDE
HOME LOANS SERVICING, LP,

Plaintiff,

14 vs.

15 LAC T. HOILIEN; JOHN DOES 1-50;
16 JANE DOES 1-50; DOE
17 PARTNERSHIPS 1-50; DOE
CORPORATIONS 1-5; DOES ENTITIES
1-50; and DOES GOVERNMENTAL
UNITS 1-50;

18 Defendants.
19

CASE NO. 14CV0132-LAB (WVG)

**ORDER RE: ISSUANCE OF
WARRANT**

20 Attorney Linda Voss removed this action, and a related action, 14cv132-LAB (KSC),
21 *Bank of America v. Hoilien*, from Hawaii state court on January 16. The Court on January
22 28 ordered her to show cause why the case should not immediately be remanded. The order
23 also pointed out numerous reasons why the removal appeared to be frivolous, and ordered
24 her to show cause why she should not be sanctioned for having filed it, by filing a
25 memorandum of points and authorities.

26 Ms. Voss did not obey the Court's order, and the Court remanded the case but
27 retained jurisdiction over the issue of sanctions. Then on February 18, the Court ordered Ms.
28 Voss to appear in person for a hearing on March 11, 2014, and to show cause why she

1 should not be sanctioned and held in contempt. The basis for sanctions or contempt
 2 included not only the original charges she had never responded to, but also the fact that she
 3 had disobeyed the Court's order. In addition public record information suggested that Ms.
 4 Voss was acting in bad faith. A review of the state court dockets showed judgment had been
 5 entered in both cases before Ms. Voss removed them. State bar disciplinary records also
 6 showed she had been fined and suspended from practice by two federal bankruptcy courts
 7 for dozens of repeated violations similar to the ones in the two cases before this Court. She
 8 is in the midst of state bar disciplinary proceedings arising from those final adjudications.¹
 9 This mounting body of evidence strongly suggests that Ms. Voss is causing significant
 10 disruptions within the court system, and shows no inclination to stop in spite of the sanctions
 11 imposed on her.

12 Besides being emailed to her, the February 18 order was served on Ms. Voss
 13 personally at her home on March 3, and proof of service was filed in the docket of both
 14 cases. The order could hardly have been more clear what was required of her:

15 Linda Voss, Esq. is therefore **ORDERED** to appear in person for a hearing to
 16 determine whether sanctions are appropriate, and what they should be, for
 17 having filed the notice of appeal, as well as to determine whether she should
 18 be sanctioned or held in contempt for disobeying this Court's order. The
 19 hearing will be held on **Tuesday, March 11, 2014 at 11:00 a.m.** at the United
 20 States Courthouse Annex, in courtroom 14A, 333 West Broadway, in San
 21 Diego, California. Ms. Voss may, if she wishes, file a memorandum of points
 22 and authorities not longer than seven pages, by Tuesday, March 4, 2014. She
 23 may be represented by counsel at her own expense if she wishes, but she still
 24 must personally appear.

21 (Order of February 18, at 1:27–2:7.)

22 Ms. Voss failed to appear for that hearing. She also never contacted the Court, filed
 23 anything by way of explanation or excuse, sent an attorney to represent her, or in any way

25 ¹ The initiating documents, and Ms. Voss' response to one document, can be found
 26 on her California state bar page. Case number 13-J-12950 pertains to her suspension by the
 27 United States Bankruptcy Court for the Northern District of California, issued May 17, 2013.
 28 She filed a response to the state bar charge, admitting the underlying facts but arguing she
 was not culpable because of a "mental health condition from which [she] was suffering and
 for [she] is currently seeking admission into the State Bar's Lawyer Assistance Program and
 the State Bar Court's Alternative Discipline Program." (Response, August 12, 2013.) Case
 number 13-J-12950 pertains to her suspension by the United States Bankruptcy Court for
 the Central District of California; she has not yet filed a reply.

1 manifested any effort either to obey the Court's order or explain her failure to do so. On top
2 of the sanctionable and contemptible conduct it appeared Ms. Voss had committed, her
3 failure to appear amounts to criminal contempt. Even though she knew the Court had
4 ordered her to appear, she disobeyed that order without explanation or any apparent excuse
5 or justification. Assuming, as seems to be the case,² her failure to appear was willful, she is
6 subject to discipline for criminal contempt.

7 Willful disobedience of the Court's order amounts to contempt. *United States v.*
8 *Rylander*, 714 F.2d 996, 1001 (9th Cir. 1983); *Shuffler v. Heritage Bank*, 720 F.2d 1141,
9 1146 (9th Cir. 1983). Civil contempt differs from criminal in that civil contempt seeks to
10 coerce the contemnor to do what the court has already ordered her to do; and once she
11 obeys, she is purged of the contempt and is free. *Turner v. Rogers*, 131 S.Ct. 2507, 2516
12 (2011). But here, the contempt serves to vindicate the Court's authority, and as such it is
13 likely to be criminal in nature. See *Rylander*, 714 F.2d at 1001.

14 While the Court might fashion and impose some kind of sanction in absentia, the
15 latest act of contempt is another matter; her presence is required. See *Crosby v. United*
16 *States*, 506 U.S. 255, 256 (1993) (holding that Fed. R. Civ. P. 43 does not permit trial in
17 absentia of a defendant who absconds before trial and is not present when it begins).

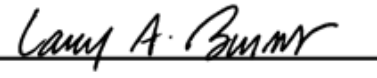
18 Ms. Voss' pattern of behavior gives the Court every reason to believe her disruptive
19 violations will continue. Her behavior also makes it clear she will not respond even when
20 ordered to do so, and will not voluntarily appear at hearings. Regrettably, this leaves the
21 Court with only two options: allow her to flout the Court's orders with impunity, and continue
22 with her spree of violations; or order her taken into custody to answer the contempt charge.

23
24 ² The Court could conceive of scenarios in which failure to appear would not be willful
25 — for example, if Ms. Voss were suddenly incapacitated after being served with the order,
26 and rendered unable to obey it. It is also possible, as suggested by her response to state bar
27 disciplinary proceedings, that she is suffering from some kind of mental condition or disability
28 that would render her actions less than willful. It should be noted, however, that her
professed mental condition has not prevented her from filing pleadings or practicing law, so
it is unclear how such a condition could prevent her from making even a small gesture of
compliance, such as sending a letter explaining why she could not attend the hearing. But
if there is some kind of explanation, it is up to Ms. Voss to provide it, and not up to the Court
to speculate what it might be.

1 The former is obviously unacceptable. So it is with reluctance that the Court will issue a
2 warrant requiring her arrest, so that she can be brought before the Court to answer the
3 charge of contempt for willful failure to appear at the March 11 hearing. And at the same
4 time she will be expected to respond to the earlier orders regarding sanctions and contempt.

5 **IT IS SO ORDERED.**

6 DATED: March 23, 2014

7 
8 **HONORABLE LARRY ALAN BURNS**
9 United States District Judge